Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1979

NO. 79-1153

KEM MANUFACTURING CO., INC.,

Petitioner

v.

DRACKETT PRODUCTS, CO., et al.

Respondents

REPLY BRIEF ON BEHALF OF PETITIONER KEM MANUFACTURING CO., INC.

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MAY IT PLEASE THE COURT:

The jurisprudence of this Court and the Seventh Amendment of the Constitution require extraordinary efforts by courts to reconcile jury verdicts [see the cases cited on page 11, Petition]. The opinion of the Court of Appeals indicates that that duty was not adhered to in this case. This point is not directly addressed by our opponents in their opposition and it is plain why this is so.

This principle of law, alone, would seem to require affirmance of the judgment of the district Court. Yet the Court of Appeals, based on a specific finding that Rule 49 F. R. C. P. had been violated ["The cross claim by Drackett

raised legal issues almost overlooked at the trial and ignored in the special verdict" Petition A-11], remanded the case. For emphasis, everybody now agrees that the issue of contribution was not put to this jury. Rule 49 says that when this is so, the judge may decide the issue and this judge did decide it. He denied the claim for contribution. The result is some what of a non sequitur.

The point is simple. Jury verdicts must be treated specially. If it is possible for them to be reconciled, that must be done. In this case, the jury decided the issues between plaintiff and both defendants. As between the defendants, they decided the issue of indemnity. The issue of contribution was not decided by them because it was "ignored in the special verdict". As pointed out hereinbefore, Rule 49 makes it manifest that, where something is ignored in the special verdict, it is to be decided by the district judge and in this case, he decided it.

The result in the Court of Appeals flies in the face of both of the above principles of law. It ignores the rule that jury verdicts are to be upheld where at all possible and it proceeds from this omission to upset a decision by the trial judge which he is absolutely empowered to make. And it does this without any comment on the facts which premise either finding. In other words, there is nothing in the opinion about whether the decision of the jury as between plaintiff and Kem or whether the decision by the judge as between Drackett and Kem, or either of them, were wrong. [1]

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1. In the opposition brief, reference is made to matters outside the opinion of the Court of Appeals. Without access to
(footnote 1 continued on following page)

We would respectfully submit that this is, at best, the exaltation of misconceived form over substance. Our opponents complain that this case is not of national importance, etc. It is true that the foundations of the Republic are not shaken by the opinion below. However, this Court has repeatedly held that jury verdicts are not to be overturned or ignored except in the most extreme cases. Here, there was a rational basis for the result below and it did not deserve the treatment it got on appeal. The said appellate treatment establishes a precedent which, if followed, erodes the right to trial by jury albeit, perhaps, in only a small measure. Nonetheless, erosions of this nature have commanded the attention

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(footnote 1 continued)

those matters, it is difficult to imagine how this Court could react to them. If suffices to say that there is nothing in the Court of Appeals opinion which makes any complaint with the charge to the jury or the testimony of the plaintiff. We agree with the quotation thereof in the opposing brief because it demonstrates that the plaintiff, himself, completely exonerated Kem from any responsibility for his damages. That testimony compelled the result the jury reached as regards the plaintiff's complaint against Kem.

What is important in this is that the opposing brief does *not* direct itself to the Court of Appeals flat holding that its contribution issue was "ignored in the special verdict" and it does *not* discuss why Rule 49 should not be enforced as written because of this omission.

of this Court in prior cases, and should, we submit, draw that attention here.

RESPECTFULLY SUBMITTED

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CERTIFICATE

I hereby certify that, as required by the Rules of the United States Supreme Court, Rules 21 and 33, three copies of the foregoing document have been served on each of the following named individuals by depositing same in an appropriate receptable of the UNITED STATES POST OFFICE, first class postage prepaid addressed as follows:

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New Orleans, La., March 4, 1980.

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